

Internal Revenue Service

Department of the Treasury

District
Director

Person to Contact:

Telephone Number:

Refer Reply to:

Date:

AUG 01 1990

CERTIFIED MAIL

Dear Sir or Madam:

We have considered your application for recognition of exemption from federal income tax as an organization described in section 501(c)(4) of the Internal Revenue Code.

The information submitted discloses that you were formed on [REDACTED].

Your articles of incorporation state your purposes to be: "To ensure the integrity of the common areas as more fully set forth in the Declaration of Covenants and Easements recorded in the Office of the Recorder of Deeds in and for [REDACTED]." Your Declaration of Covenants states that common area shall mean all real property owned by the Association for the common use and enjoyment of the owners.

Your application states that your organization was formed to insure the attractiveness of homes, to prevent nuisance, to preserve, protect and enhance the values and amenities of [REDACTED] and provide for the maintenance of the common areas.

In your response to our request for additional information, you stated that "There are no areas open to the general public which are owned by the Association." You also stated that, "The common areas and/or facilities are owned and maintained by the Association but are not for the general use of the public." Your association does not serve a "community" which bears a reasonable recognizable relationship to an area ordinarily identified as governmental.

Your Bylaws state that "Member shall mean and refer to those persons that are lot owners of record."

Your income is derived from monthly assessments, initiation fees, special assessments and interest earned on your bank account. Expenditures are for activities directly related to your exempt purposes.

[REDACTED]

Section 501(c)(4) of the Code provides for the recognition of exemption of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(2)(1) of the Income Tax regulations provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated for the purpose of bringing about civic betterments and social improvements.

Revenue Ruling 71-102, 1972-1 C.B., page 149, states that a non-profit organization formed to preserve the appearance of a housing development and to maintain streets, sidewalks and common areas for use of the residents is exempt under section 501(c)(4) of the Code. Membership is required of all owners of real property in the development and assessments are levied to support the organization's activities. It was held that by maintaining the property normally maintained by a municipal government, the organization served the common good and general welfare of the people of the community.

Revenue Ruling 74-99, 1974-1 C.B., page 131, modified Revenue Ruling 72-102 by stating guidelines under which a homeowners' association could qualify for exemption under section 501(c)(4) of the Code. These guidelines are:

1. The organization must serve a "community" which bears a reasonable, recognizable relationship to an area ordinarily identified as a governmental unit;
2. It must not conduct activities directed to the exterior maintenance of private residences; and
3. The common areas or facilities must be for the use and enjoyment of the general public.

Revenue Ruling 74-99 states that Revenue Ruling 72-102 "... was intended only to approve ownership and maintenance by a homeowners' association of such areas as roadways and parklands, sidewalks and street lights, access to, or the use and enjoyment of which is extended to members of the general public, as distinguished from controlled use or access restricted to the members of the homeowners' association..."

[REDACTED]

Based on the information submitted and the applicable law cited above, we conclude that you are primarily organized and operated to provide services for the personal benefit of your members and not primarily for promoting in some way the common good and general welfare of the people of the community. Therefore, you do not qualify for exemption from Federal income tax as an organization described in section 501(c)(4) of the Code.

A community within the meaning of section 501(c)(4) of the Code and the regulations is not simply an aggregation of homeowners bound together in a structured unit formed as an integral part of a plan for the development of a real estate subdivision. Although an exact delineation of the boundaries of a "community" contemplated by section 501(c)(4) is not possible, the term as used in that section has traditionally been construed as having reference to a geographical unit bearing a reasonably recognizable relationship to an area ordinarily identified as a governmental subdivision or a unit or district thereof.

You are not relieved of the requirements for filing Federal income tax returns.

Your attention is called to section 528 of the Internal Revenue Code which was added by the Tax Reform Act of 1976. This section provides that, in certain circumstances, a homeowners' association may elect not to be taxed on its "exempt function income" which includes membership dues, fees or assessments from owners of real property. The election is made by filing Form 1120H, if you determine that your organization qualifies under section 528.

If you do not agree with our determination, you may request consideration of this matter by the Office of Regional Director of Appeals. To do this you should file a written appeal as explained in the enclosed Publication 892. Your appeal should give the facts, law and any other information to support your position. If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date. The hearing may be held at the regional office, or, if you request, at any mutually convenient district office. If you will be represented by someone who is not one of your principal officers, that person will need to file a power of attorney or tax information authorization with us.

[REDACTED]

If you do not appeal this determination within 30 days from the date of this letter, as explained in the enclosed Publication 892, this letter will become our final determination on this matter.

Sincerely yours,

[REDACTED]

[REDACTED]
District Director

Enclosure: Publication 892

cc: [REDACTED]